

A LEARNED  
T R E A T I S E  
C O N C E R N I N G  
W A R D S  
A N D  
L I V E R I E S;

W R I T T E N

By the Right Honourable and  
learned Gentleman *Sr. James Ley* Knight  
and Baronet, Earle of Marleborough, Lord  
high Treasurer of England, when he was  
Attorney of his Majesties Court of  
WARDS and LIVERIES.

WHEREIN IS SET FORTH  
the learning concerning Wards and Liveries, col-  
lected and well digested out of the yeare-  
bookes, and other authorities of the Law, for  
the benefit of all that are Studious.

---

London printed by *G. Bishop*, and *R. White*,  
for *Henry Shephard*, and *Henry Tinsford*, and are  
to be sold at the signe of the Bible in Chancery-  
Lane, and at the three Daggers in  
Fleete-streete. 1642.

THE A T S H

W A R D S

E E





THE EPISTLE  
DEDICATORY.

T O  
THE STUDENTS OF  
the Common Law of England.

---



Is not to commend this  
Work, that this is writ-  
ten, for that it will it  
selfe; nor is it to present  
unto the curious Readers view, no-  
velties but ancient learning useful-  
ly digested; the common Law of  
*England* that is defined to be *Lex*  
*non Scripta*, is best knowne by the  
multitudes of particular cases re-  
ported and set downe in the seve-  
rall yeare-bookes, and other re-

*The Epistle*

ports of the Law, and in them the severall resolutions of different natures being set downe as in time they hapned to be argued, without having regard to report together all such cases as concerned one kinde of learning, breeds such confusion, that the painefull student must be very carefull under his severall titles in his common-place-bookes to take notes with reference to the bookes from whence he takes them proper to be applied to the title under which he writes it; and likewise carefully to coate his bookes to each other, or otherwise upon sundry occasions hee may be driven to tumble up and downe the severall bookes to resolve himselfe, and misse too of such good resolutions as the bookes would afford him, if his memorie (which may easily faile) be not admirable;

This



*Dedicatorij*

This small Epitomie will prevent  
that trouble, and helpe (more then  
any abridgement extant) the labori-  
ous Student to know and find  
out the learning concerning wards  
and Liveries, no small part of  
our Law, nor easie to learn.  
It was written by the right Hono-  
rable and learned Sir James Dey,  
Earle of Marlebrone, Lord High  
Treasurer of England, when hee  
was Attomey of the Wards and  
Liveries, for his owne private use,  
but now presented to publike view  
for the common good of the Stu-  
dents of the Law; The learning  
concerning Wards and Liveries  
was not practised in one peculiar  
Court, nor differences concerning  
Wards lands not confined to any  
particular Court, but left to be  
proceeded in all Courts proper for  
the nature of the causes, till of late  
yeares: but now by a Statute

*Dedicatory.*

made 32, *H. 8. cap. 46.* A peculiar Court knowne by the name of the Court of Wards is erected, wherein all things that concerne the Kings Wards is heard and determined, so that now the Law as to Wards being to be onely practised there: This Treatise will be of good use to him that intends that practise, for in it will be found very much of the learning concerning Wards, for him that desires the knowledge of such learning: It was chiefly published, and to him is wisht encrease of Learning,

*Farewell.*



Instructions for our Mr.  
of our Wards and Liveries, for  
the better authorizing and di-  
*recting of him in the execution of his*  
Office and performance of  
our service.



*First our pleasure is, and we  
doe declare the Master of  
our Wards shall and may  
survey and dispose of all  
and every of our Wards,  
Idiots and Lunatiques, and  
respectively, of their Lands, Tenements, Her-  
editaments, Chattells, goods, properties, in-  
terests, rights, titles, Intrusions, Arrerages  
and Meane-rates, and all Liveries, Ouster  
le maines, and ancient Mannors, and all Ad-  
vowsons, and presentations of Churches, Her-  
riots, Relieves, Coppyholds, Woods, Mines,  
and Quarries, of any our Wards, and of all  
duties belonging, or to belong to us by reason  
of any Tenure.*

*That*

That the Master of the Wards shall from time to time call unto him one or more of such persons as we nominate to be his assistants, and shall use the assistance and advice of them or one of them, at a place certayne, and times certayne be limited and appointed by the Master for the sitting upon the matters within his survey and disposition, so that our Tenants and Suitors may make their repaire thereunto.

That the Master with the advice aforesaid shall have power and authoritie to compound for the Wardships, Idioties, Lunatiquies, and other duties aforesaid, and to assesse all Fines, install all payments for the matters aforesaid, and to take Bond and Securitie in our name for the same, and to commit them to the safe custody of our Clerke of our Wards, and Liveryes to our use, and upon full payment to cause the same to be delivered up and cancelled, and also to discharge and renew any Bond or Securities as occasions shall require.

That there bee ordained a speciall seale for our Wards, Liveryes, and Tenures, and for our Revenue arising by reason thereof, which seale shall be in the custody of the said Master of the Wards, and that no other seale shall

shall bee used for, or concerning any the matters or causes aforesaid.

That the Master with the advice aforesaid shall have power and authoritie to grant Wardships for Fines, to make Leases of Ward Lands, and of Lands in our hands for want of Livery or Ouster le maine, for Fines and reserving of rents, and to grant the custody of Liberties, and Lunatiques, and their goods and Lands, and to compound for meane rates, and to mitigate and remit as well the forfeitures of such bonds and meane rates, as also to allow reasonable recompence to prosecutors, such as doe service in the cases aforesaid. That the Master with the advice aforesaid shall have power and authoritie to give direction to any of our Courts, and unto the officers thereof and unto any of our Ministers and officers, as well for the proceedings and prosecution of any suites and pleas, and finding of offices and inquisitions, making of certificates and other services, as also for the stay, surceasing or superseding thereof, and that no direction shall be given to the contrary or otherwise by any of our chiefe Officers touching the premisses: That all petitions or suites made to us touching the causes aforesaid shall be ci-

ther referred or directed to the said Master, who shall have power with the advice aforesaid to answer and determine the same, and that petition, suite, or information shall not be received by our counsell of revenew touching the premisses but that the same shall bee made and belong unto the Master of the Wards and Liveries.

And whereas the Kings most excellent Majestie by Indenture bearing date 10. Januarij 14. Jacobi, made betwene his Majestie on the one part, and Sir Francis Bacon Knight, Lord virulam, and Lord Chancellour of England, Sir John Dacombe Knight deceased, Thomas Murrey Esquire our Secretary, Sir James Fullerton Knight, one of the Gentlemen of our Bedchamber, John Walter Esquire our Atturney Generall, and Thomas Trevor Esquire our Sollicitor Generall of the other partie, hath demised and granted unto them for our onely use and benefit of sundry Lordships, Castles, Burroughes, Townes, Mannors, Lands, Tenements, Liberties, Franchises and Hereditaments, to have and to hold the same from the Feast of St. Michael the Archangell last past before the date hercof, for the terme of 99. yeares. And upon the trust  
and

and confidence, and to the intent and purpose in the same Indenture mentioned and expressed. Now our pleasure is that the said Lord Chancellor and the rest of the surviving Lessees and their Assignes shall from time to time joyne in all such grants, discharges, conveyances and Instruments touching the matters aforesaid by writing under their hands and seales and otherwise, as by the Master of our Wards, with the advice aforesaid shall from time to time be directed; And our further pleasure is that the Commissioners for our revenewes (if neede shall so require) shall allow and give warrant in writing for the same.

That the Master with the advice aforesaid shall have power by Letters Patentes under our great Seale to appoint such Feodaries, Escheators Auditors, Receivers, Surveyors and other Ministers of the Wards, Liveries, and matters aforesaid as he shall thinke needfull for our profit, and service, and from time to time to alter, change, determine and discharge all or any of the said Officers and Ministers, and their Offices and employments as now or hereafter shall bee, and determine our Will and Pleasure concerning the same,

That

That all Ordinances, Constitutions, Acts, made, published, declared and set downe contrary to the hindrances of these our instructions, shall so farre onely as they are contrary, or to the hinderance thereof be utterly void and annihilated, any other matter, cause, or thing to the contrary thereof notwithstanding.

That the Master of our Wards and Liveries doe acquaint the Attorney and Counsell of the Kings Majesties Court of Wards and Liveries withall such proceedings as may require their assistance for our said Tenures, Renew and profit, and especially his Majesties Attorney of that Court, and the Clerke of that Court for the preparing, clearing, finding, searching, and revealing of Tenures, and of the states subject unto our Wardships and Liveries, by any due and lawfull meanes whatsoever.

Lastly, whereas the Kings most excellent Majestie hath by his Letters Patentes under his great Seale, dated the 11. day of this December granted unto the Master and Counsell of the Court of Wards and Liveries, Commission with instructions and directions for compounding for Wards, Idiots, and Lunatiques. Our will and pleasure is,  
that



that the Master of the Wards shall diligently and carefully informe himselfe of the same instructions and directions, and by Example and presidents thereof order and dispose the affaires of our Wards, Idiots, Lunatiques, Liveries and Tenures, so farre forth as the same may stand with congruities and concordancy, taking speciall care that our just and reasonable profits may be raised without diverting the same to others; and that neverthelesse our Tenants may be moderately charged, and our Wards may be educated in Religion.

Examinatur per  
Jac. Ley.

1991



## Tenures.

**I**F the King grant Land in Fee, and reserve nothing, the Patentee shall hold by Knights service *in Capite*. Coo.6. Wheelers case. fo. 6. b. Co. 9. Ant. Lowes case. 123. 7. E. 4. 12. b.

So if in his grant the King saies by expresse words, *Abfq;* 44. E. 3. 45. a. Co. 9. Ant. Lowes case 123. b.  
*aliquo inde redendo*, yet because all Land must be holden by some service, the best shall be intended for the King; therefore against the expresse words of the Patent, the Law will create a new Tenure by Knights Service *In Capite*.

So if the King gives Lands *tenend.* as freely as he holds the Crowne, yet the Grantee shall hold by Knights service *in Capite*, and in all these cases the Tenure shall be by such a part of a Knights Fee, as the value of the Land shall beare; what shall be said of a Knights Fee, see the end of this Title.

But if the Grant be *Tenend. de nobis per*  
B
*servitium*

Co.6.Wheelers case 7.

*servitium unius Rosa, Rubia*, or the like, *pro omnibus aliis servitiis*, this is a Tenure by Soccage *in Capite*, because, if the King reserve any speciall rent, the Tenure shall be such as he reserves.

If it be *Tenendum de nobis ut de honore, Castrum vel Maner. de A. per servitium Militare*, or, *De honore Castro vel Maner. de A. per servitium unius Rosa, Rubia*, or by 2.s. or by Fealty, for all the services, these be meane Tenures of the King, in the first case common Knights service; in the second, common Soccage, because the Tenure is not immediatly from the person of the King.

33.H.6. Br.  
Tenur 94.  
Inst.fo.77a.

But yet there are certain Honours so anciently annexed to the Crown, (*viz.*) Barkinsteed, Newland, Rawleighe, The Abbey of Marle, &c. That a Tenure of the King, as of any of these, makes a Tenure *in Capite*, either in Knights service, or Soccage, according to the words of the Tenure; but yet this is improperly a Tenure *in Capite*, for he which holds of the King, as of any of these Honours, may alien without licence of the King, which he cannot doe which holds *in Capite* of the King, as of his person.

Stamf.pre.Rs.

44.E.3.45.

If

If the King grant Lands *Tenend. de nobis per servitia debita*, This shall be in *Capite* by Knights service, because where the words be uncertaine, the best shall be intended for the King. 44.E.3.45.

If the King have Lands in his hands, holden by a common person immediatly as aforesaid.

For Treason all Tenures, aswell of the King as others, are thereby extinguished, but if the King grant the same Land to another *Tenend. de capital. Domino per servitia debita*, the Tenure is restored, and the Land holden of the Lord of whom it was holden before the Treason, and not of the King immediatly; yet if he grant it, *Tenend. de nobis hereditibus & successoribus nostris, & al. capital. dominis feodi illius per servitia debita*, It shall not make an immediate Tenure from the King, but the immediate Tenure shall be of the Lord of whom the Land was holden before; and if he grant it *Tenend. de nobis & by new services, & faciend. aliis dominis servitiis debitis*, the meane Tenure shall be revived, without any regard of the priority of the words of the Patent, reserving new services. And this in favour of restoring Co.6.p. Sir John Mollins case 6.  
Co.9.p. Bewleyes case 131.

storing an ancient Tenure, but it is otherwise in the Creation of a new Tenure by the Kings grant, without any respect to an ancient.

Stam. prerog.  
Rs. cap. 12.

And in this last case, and also where the King purchaseth land holden of a subject (in which case also all Tenures are extinct) it hath alwayes been used upon a grant thereof made by the King to restore the ancient Tenure of the Subject, and if a grant had beene made otherwise, hee of whom the lands were holden before, had his remedy by petition to the King.

If the King purchase a Mannor, of which *I. S.* holds, hee shall hold as hee held before, and shall not sue Livery, nor pay Primer seisin, nor hold *in Capite*.

To hold of the King by graund Sergeancy, is Knights service *in Capite*; by petty Sergeancy, is Soccage *in Capite*; whereof more in the following Title.

Lit. 34.b.  
Coo. 2 p.  
Cromwells  
case. 81.  
Lit. 266.

To hold of the King by Castle-guard, is Knights service *in Capite*, but to hold by certaine Rent for Castle-guard, is but Soccage; But by *Fitz Harberts natra breuium*

*breuium* a Tenure of the King, as of an ancient Honour by certaine rent for the keeping of Dover Castle, is taken to bee Knights service *in Capite*; but this seemes no Law.

Coo.4.Luttr.  
case.88.b.  
F.N.B.256.a.  
Stam.prærog.  
29.b.

Note that there must of necessity bee a Tenure of all Lands in the hands of Subjects, wherefore if the King grants or releases the service of his Tenant by Knights service, &c. to his Tenant and his heires, this cannot extinguish the Tenure wholly, but that fealty shall remaine for necessity of Tenure; As in grants, so in offices found after the death of the Kings Tenant to entitle the King or Lord of a Wardship, the words of the office directs what the Tenure is, and therefore before the Statute of 2. E. 6. cap. 8. if an office had beene found, that one held of the King generally, *Sed per que servitia Iurat. ignorant*, this was taken for a Tenure by Knights service *in Capite*, because where the Tenure is uncertaine, the best shall be intended for the King.

And for the same reason an office finding *De quo tenetur Iurator ignorant*, this

was taken for Tenure by Knights service *in Capite*, because where the Tenure is uncertaine, the best shall be intended for the King.

And for the same reason an office finding *de quo tenetur jurat Ignorant*. was taken for the immediate Tenure of the King, and was sufficient to entitle the King to a Wardship, but by the said Statute it is provided that in the first case, it shall not be holden for a Tenure *in Capite*, and in the second place no immediate Tenure of the King, but in such case a *Melius inquirendum* shall be awarded, howbeit, if upon the *Melius inquirendum* the same be so again uncertainly found, the best shall be intended for the King, (*viz.*) a Tenure *in Capite* by Knights service.

Stat. 1. Ed. 6. 4.

7. E. 3. 37.

There are also Tenures by collusion, or estoppell, as when a man seised in Fee simple of Lands holden of a common person, hath sued a Livery, or Ouster le main of the same out of the Kings hands, or hath confessed by any matter of Record a Tenure in chiefe of the King, this makes the Land holden of the King, of whomsoever it was holden before, and the



the King shall have wardship by reason of this Tenure.

Tenant in taylor generall holds of his Donor in such Knights service as hee holds Ouster of his Lord, yea although upon the gift made the Land be given *Tenend. de capital. dom.* yet such a cause shall not alter the Tenure, but that hee shall still hold of his Donor.

Twelve plough Land, being every one of them anciently of the yearly value of five nobles, make a Knights Fee, worth *per ann.* 20. *l.* which was anciently accompted sufficient maintenance for a Knight, thirteene Knights Fees, and a third part being 400. markes yearly value, made a Barony, twenty Knights Fee of 400. *l.* yearly value, made an Earledome, and according to the same proportion 800. markes a Marquedome, and 800. *l.* a Dukedome, the fourth part of which is paid the King for a reliefe, *viz.* of a Knights fee, 5. *l.* and so of the rest.

To hold of the King in Fee Farme, is Mag. Cart. cap. a Soccage Tenure, and yet this Tenure shall yeeld no reliefe, because the Law intends that the Farme, or Rent, that hee payes for the Land, is the full value of

38.E.3.7.

2.Ed.4.5.

1.Ed.2. *de mili-*  
*tibus*, Nevell.

Re.9.124. Ant.

Lowes case.

Inst.fo. 69. a. b.

20.E.1c case.

*Inhabitans de*  
*Saſſen Walton.*

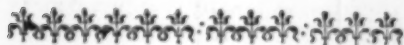
the land, and recompences all other profits of the Tenure, and this is the common experience of the Exchequer.

Tenures for the most part are either Knights service, or Soccage; Knights service is either *in Capite* of the King, or in common Knights service; *in Capite*, is of two kindes, one more speciall, *viz.* a grand Sergeancy, the other the generall service; Knights service is either of the King, as of some Honour, Castle, or Mannor, or Knights service of common persons: So Soccage is either *in Capite*, or common Soccage, *in Capite* more speciall, as petty Sergeancy, or more generall, the common Soccage is either of the King, as of some Honour, Castle, or Mannor, which are species of ancient Demefne and Burgage of the King, or Soccage of a common person.

There are also other Tenures, as Frankallmoigne, Tenure by Divine Service, base Tenure, as Coppy-holder, Tenure by villenage, of which I need not speake for the purpose in hand.

Of Knights service and Soccage Tenure of a common person: I may likewise spare the description; but of either  
of

of these much is said in the Title of Wards collusion, and those that follow.



Tenure *in Capite* by  
Knights service.

**I**S properly where lands are holden of the person of the King and of his Crowne, as of a seigniory it selfe in grosse, and chiefe above all other seigniories; Improperly of him as of some ancient Honour annexed to the Crowne, as Barkingsteed, Newland, Rawleigh, the Abbey of Marle, &c. And this description is understood as well of Knights service, as Soccage *in Capite*.

30. H. 8. Dyer  
44. a.

Stat. prerog.  
Rs. fo. 29. b.

Knights service *in Capite* is denoted either by expresse words, as *Tenend. de nobis per servitium militare*, or improperly, by construction of Law upon uncertaine words, as in the cases *supra* Title, Tenures.

The

Lit. 34.b.

The more speciall Knights service, is grand Sergeancy, which is denoted by some particular service to be done in his own person to the King, then the other requireth, as to carry the Kings Banner, Launce, &c. to lead his Hoast, to be his Marshall, to carry his Sword before him at his Coronation, to be his Sewer, Carver, or Butler at his Coronation, to bee one of the Chamberlaines of his Exchequer, and divers other the like.

2. 24. Ed. 3. 47.

C. Stam. prerog.

Rs. fo. 7. ib. 6. L.

2. ib. 12. 6. 5.

Plo. Com. Fo-

gags. 17.

2. 13. H. 4. 6.

b. 22. H. 8.

5. E. 4. 12.

Stam. prerog.

Rs. fo. 8.

To Knights service *in Capite*, are incident not only Ward, Marriage, Primer seisin, Reliefe, Livery, and Licence to alien, but also Prerogative to Wardships, and Primer seisin of all other Lands holden of common persons in Knights service, or in Soccage, and of all other services, whereof the Tenant *in Capite* dyed sole seised in Fee, and Fee taile in his owne Right, or in the Right of his wife in Possession, Reversion, Remainder, or in Right which descended to the Kings Ward, and not to any other customary heire, as the younger sons in Gavellkindes, &c. Except the Lands holden of the Archbishop of Canterbury, the Bishop of Duresme between Tyne and Tese, and the

11. Ed. 4. 18.

the Lords of the Marches, where the Kings writs runneth not, which they had in *Anno* 17. *Ed.* 2. But the body is not wherefore the King shall have that against all men, but the King shall have no Prerogative in the Lands of the second Ward, which he hath by reason of Ward, as where one that held of the Kings Ward, was never seised of those Lands, nor of the service they were holden by.

17. *Ed.* 2.  
Meues case.  
133.  
Sta. 17. *Ed.* 2.  
Stam. pre. R.  
7. b.  
6. H. 2. Gard.  
105.

And the meane Lords, whose Fees the King hath in Ward by his Prerogative, shall have their Rents by which such Lands were holden during the Minority payed to them, by the Kings Officers appointed to receive the profits of the Land holden of the other Lord, upon request and tender of an Acquittance to the said Officers.

As by this Tenure the King hath Prerogative in case of Ward, so also he hath the like Prerogative of Primer seisin, which see after, Title Seisin.

Soccage



### Soccage *in Capite*.

Coo. 6. p.  
Wheelers case  
7.

Lit. fo. 36. a.

**T**HE Tenure is described in the last Title; the service that this Tenure is knowne by, is generally where the Tenant holds by certaine services, not by knights service, for all manner of services, as *Tenend. de nobis per fidelitatem tantum*, or by homage and Fealty, or by Fealty and rent, or by homage, fealty and rent, or by a red Rose, or the like, *pro omnibus serviciis*, and although in the last example nothing be said of Fealty, yet it is implied by the Law, as incident to all manner of services, ; More speciall soccage *in Capite* is petty Sergeancy, which is where a man is bound by his Tenure to render yearely to the King a Bow, a Sword, Gauntlet, or such like small matter touching the War.

Stam. prer. Rs.  
cap. 3. fo. 13. b.

To Soccage *in Capite* are incident, Reliefe, Primer seisin, and Livery; and licence to alien; whereof in these small Titles.

Common.



## Common Knights service of the King.

**I**T is where land is holden of the King, as of some Honour, Castle, or Mannor, *per servitium militar.* expressly, or impliedly by construction of Law upon ambiguous words.

This Tenure gives the King Ward, Marriage, Reliefe, Livery, but no Primer seisin, nor licence to alien, nor hath the King hereby any prerogative to have other lands holden by the Kings Tenant of common persons into Wardship.

But yet the King shall by his prerogative have the Mariage of such Ward of whom soever he holdeth besides, though his Tenant were enfeofed of the lands holden of his Maiesty after he was enfeofed of his lands holden of others, without respect of the priority of feoffement, which alwayes prevailes amongst meane Lords; whereof more fully afterwards, in Title Marriage.

Stam.præter. Rs.  
fo. 10.  
24. Ed. 3. 31.  
6. 5.

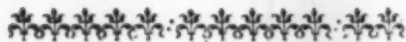
Common



## Common Soccage of the King.

**I**S where Land is holden of the King, as of some Honour, Castle, or Mannor, by the services mentioned *supra* Title Soccage *in Capite*.

This Tenure yeelds a Reliefe, but no Wardship to the King, Marriage, Primer seisin, &c.



## Ward.

**T**He Tenure by Knights service, had his originall Creation for the defence of the Kingdome, binding the Tenant to serve the King, or other Lord to whom he is Tenant in the Kings warres for a certain time, to the quantity of his Terme,



Terme, and therefore that the Commonwealth should not be unserved, the Law gives the King, or the other Lord custody of the heire Male of such Tenant, being under age of one and twenty yeares at the death of his Ancestor, together with the profits of his Land, till the same age. Lit. fo. 22.

And of the heire Female, under the age of fourteen yeares at the death of her Ancestor, and unmarried, together with the profits of her Land, untill her age of sixteen, to the end that he may provide himself of a man able to doe him Knights service : But if the heire Female be married at the death of her Ancestor, then her Land only shall be in Ward but till her age of fourteen yeares, because those two yeares after fourteen, are given only to make tender of her marriage, which is already done : And if at her Ancestors death she be fourteen yeares old, then there shall be no Wardship, neither of her body nor Lands, because at that age shee may have a husband able to doe Knights service, and that is her full age to be out of the Ward by the Common Law, and the other two yeares are given in favour of the Lord. Lit. fo. 22.  
Bro. Gard. 86.  
Ac. 35. H. 6. 51.  
35. H. 6. 54.

But

Lit.fo. 25.  
 Co. 3. R. 1. ch.  
 case. 38.  
 Co. 6. R. 1.  
 Ambrosia:  
 Gorges case. 22.  
 22. 6. re.  
 N. B. 143. o.  
 Lit. fo. 114.

But when lands that are holden of the king or other Lord, descend to an heire male or female in the life of the father, from some other ancestor, as from the grandfather &c. of the mothers side, the mother being dead, though the Lord shall have the Wardship of the land, yet the law of nature gives the father the Wardship of the body of such heire, with this difference, in case of an heire female, that he shall have the Wardship of her body till he have a son, and then the Lord shall have it, because by the birth of the son, he is become heire apparent, and this priviledge is given to the Father, but for his heire apparent, which now she is not, in those cases the grandfather shall not have the Wardship of his grandchilde if his father be dead, touching the kings prerogative, to have Wardships of his lands, that his Tenant by knights service *in Capite* held of another Lord: See before, Title *Tenure in Capite* by knights service, and more in *Stamf. exposition* of the kings prerogative, *cap. 1.*

So the essence of Wardships is requisite, that the Tenant die sole seised of lands in possession, Remainder, or Reversion,

version, or in right holden in knights service, and a descent to their heire, for if men be joyntly seised in fee, or in fee tayle, and one of them die, his heire under age, he shall not be in Ward, because the Lord hath his Tenant alive, *viz.* the Survivor who hath the whole, and by Title of Survivorship.

And therefore if *I. D.* for money by Coo. Knights him disbursed, purchase lands to himselfe case. 163 and others, and their heires, this is holden collusion within the Statute, 34. *H. 8. ca. 5.* to avoid Wardship which may accrewe after the death of *I. D.* because he was never sole seised, and so no title of Wardship could be after his death, because of the Survivor. But where to be joyntly Coo. 9. Flopirs seised of lands holden of the king in possession, and not in remainder to them and the heires of the body of one of them, and he that hath the inheritance dyeth, his heire deins age, the king shall have the Wardship and Marriage of such heire notwithstanding the Survivorship of the other Tenant : And this is provided by the other Statute of 32. *H. 8. 17.* in case of the king only, and therefore in such case, if the lands were holden of a com-

mon person, there would be no wardship during all the life of the Survivor.

Ward, where the Tenant dyeth seised of land in the very possession thereof, by taking the profits, &c. This admits no difficulty, and therefore in vaine to multiply cases thereof.

Coo. 2. Bing-  
hams. 92.b.

33.H.6.5.

24.Ed.3.33.

B.Na.Br. 142.b

Coo. 2. Bing-  
hams case. 92.b.

Coo. 9. Quicks  
case. 129.b.

Vet. Na.Br.

Bro. Gard. 113.

4.H.6.10.

20. Eliz.

Dy. 362.a.

He in the Remainder upon an estate for life, is not Tenant to the Lord untill the Remainder happen in possession, and therefore if a man maketh a lease for life, the Remainder to another in fee, and he in the Remainder dies, his heire being within age, here duriing the life of the Tenant for life, the heire of him in the Remainder, shall not be in ward, because the impediment is not removed; but in that case, if after the discent of the Remainder and before the death of the Tenant for life, the Lord grant away his Seigniorie, and after the Tenant for life dies, the heire of him in Remainder being under age, neither the grantor nor the grantee of the Seigniorie shall have him in ward.

If the Tenant make a gift in tayle, the Remainder over in fee to another, here the Tenant in tayle holds immediately of the chiefe Lord, and he die, his heire under

4.H.6.10.

der age, he shall be in ward to the chiefe Lord, and so shall the heire of him in remainder in fee, if the Tenant in tayle die without issue during the minority of the heire of him in the remainder, because the impediment is removed by death.

But if an estate tayle be made of lands holden of a common person, the remainder in fee to the King, the Tenant in taile die, his issue under age, he shall be ward to no body, because the Tenure and services are extinct by the fee simple, being in the King, who can hold of none, And the estate of Tenant in tayle, and the remainder over maketh both but one estate.

If the Tenant make a lease for life, or a gift in tayle, leaving the reversion in himselfe, he remaines Tenant still to his Lord, and his heires shall be in Ward for the reversion, because his estate never moved at all out of him, and he is immediate Tenant; so note the diversity between: a Remainder and a Reversion: So if the Tenant infeoffes *A.* who gives the land back againe in tayle to the tenant, or to the son of the tenant, *Tenend. de Capital. Dom.* yet the Tenant in tayle should hold

Vid. Na. Br.  
B. Gard. 113.

of his Donor, and he of his Lord Paramount, and the heire of the Donor shall be in Ward to his Lord, for the reversion, and the heire of the tenant in tayle shall be in Ward to his Donor for the possession.

Coo. 2. Bing-  
hams Case. 92.

24. Ed. 3. 33.

And for the same reason, if the Tenant in tayle be with the reversion expectant to himselfe and his heires of lands holden by Knights service, of a common person, and he dies, his heire within age, he shall be in Ward for his body, but not for his lands, because betweene the estate tayle, and the reversion, stand two distinct estates in the tenant, and the reversion only is holden immediatly from the Lord, and not the estate tayle in possession; but if the Case had been Tenant in tayle, with the remainder to an estranger in fee, there the heire of the tenant in tayle under age shall be in Ward to the Lord of whom the land is holden, for body and land, because the particular estate and the remainder make but one estate in Law, and all is holden of the Lord immediatly.

But note, that in the Kings Case, if his Tenant make a gift in tayle, and grant the reversion, over, or keepes the reversion

sion expectant to himselfe in fee, in these Cases, and the like, by some bookes the King may elect his tenant, and there shall be a Wardship of the heire of the Tenant in tayle, or of him in the reversion, as his Majesty shall elect, and this election shall binde him, so that afterwards he cannot resort to a new choice, but other bookes are contrary, *viz.* that he in the reversion is only the Kings Tenant, and he hath no election but by common experience of the Court of Wards, they use to choose the Wardship of the best estate for the King, and for the third part to bee in Ward upon the Stat. of 32. & 34. H. 8. of Wills, the words of 34. H. 8. are, that the King shall have as well lands in taile, as in fee simple.

Stat. 34. H. 8.

cap. 5.

If the kings tenant, or the tenant of a common person be disseised of his land, and die, so that a right only descend to the heire, yet the heires being within age, shall be in Ward for this right, because after the disseisin, the disseisee remaines still tenant to the Lord in right of Law.

F. N. B. 142. d.

14 H. 8. 16.

Coo. 3. Butler,

&amp; Bakers case.

35. 2.

So if tenant in taile make a feoffement in fee, and thereby discontinue the taile, and then dies, his issue under age shall

48. Ed. 2. 8.

15. Ed. 4. 10. br.

be in Ward to the Donor.

So where the heire under age recovers lands holden, &c. by a *Br. de entrey sur disseisin*, writ of Cosenage, for the action which descends he shall be in ward for this land so recovered, because of the right descended to him. *Mes autrement est lou il recover*, by a writ which doth not descend as by a writ, *De dum non fuit compos mentis*.

Yet where a possibility only descends, as if a man covenant with the father to stand seised to the use of the father and his heires upon a contingent, the father dies, his heire under age, the contingent happens, It was held by the Court of Wards, that the heire was in by descent, and that there should be a wardship, and yet nothing descended but by a possibility: And in every wardship there must be a descent, except it be in some cases, upon the Statute *de 32. & 34. H. 8. quem vide in le prochain*. Title.

Re. 10. 83. a.  
Leonard Low.  
Case.

Re. 3. 62. a.  
Lincolne Col-  
ledge Case.

Where, if the issue in male under age enters into the joynture of his mother by force of the Stat. 11. *H. 7. c. 20.* for a forfeiture by her alienation thereof he shall not be in ward, because he hath the land in



in manner of a purchase, and not by descent.

So if the father leaseth to his son and heire for life, and dyeth, and the fee descends to the son under age, so that the freehold is mergd in the inheritance, yet he shall not be in ward for the land, because he had the possession by purchase, *Si soit bona fide valet, ut &c.*

And generally in all other cases where the heire hath the land by purchase without collusion, is where he buyes the land of his father (*bona fide*) and for valuable consideration, or in the like cases; for if it be by collusion, then there will bee a wardship by the Stat. of Marleb. and 34. *H.8. cap. 5.* though the heire had not the land by descent, whereof after see in the Title Collusion.

If the King Knight the heire apparent of his owne Tenant, or of the tenant of a common person under age, and in life of his Ancestor, hee shall not bee in ward though he be under age at the death of his Ancestor, neither for body nor land, but shall for all purposes bee reputed of full age, because the king by knighting him, hath adjudged him of full age, and able

9. Ed. 3. 4. 15.  
Co. 6. Sir Geo:  
Custons ca. 76.

Coo. 10. Re.  
Leon. Lowes  
case. 83. b. t.  
Inst. 78. v.

Plo. Com. fo.  
268. Ratcliffes  
Case.  
Coo. 6. Sir  
Dru: Druries  
Case. 74.  
Coo. 8. Sir Hen.  
Constables  
Case. 171. a.

to doe knights service.

Stat. Mag.  
Carta cap. 3.

But if he knight him after his Ancestors death while he is in ward, hee is thereby presently out of ward for his body, but for his land shall be in ward till his full age of one and twenty yeares, *Quem vide apres en le Tisle Marriage*, as also some other Cases, where the heire shall be out of wardship for his body, though his lands remaine still in ward.



### Wardships and Primer Seisin.

*By these Statutes of 32. H. 8. c. 1. a.  
34. H. 8. cap. 5. of Wills.*

**W**Hereas the words of the Statute are, That every person having Lands, Tenements, or Hereditaments of an estate in fee simple, *per Knights service in Capite* of the King, or of any other Lord in common knights service, &c. May by his last Will in writing, by act executed in his life time, give, dispose, will,

will, or assigne two parts thereof for advancement of his wife, preferment of his children, or paying of his debts, &c. leaving to the King wardship and primer seisin, and to no other Lords wardship of so much of the same lands as shall amount to the cleare yearely value of a third part thereof; It is to be considered that these Statutes give to the tenant power to devise his lands by his last will in escript, which he could not doe before these Statutes, which was some prejudice to the Lords of these lands for their wardships of the two parts so devised; So then they doe give benefit to the King and other Lords, to have wardships, &c. In cases when they shall have had none before, though the Ancestor neither dyed seised, nor any land descended to his heire, which are contrary to the rules of the Common Law, which see before in the last Title.

Co. 6. Re. Sir  
Geo: Cursors  
Case. 76. a.

And where the father conveys his land holden, &c. by act executed in his life time for advancement of his wife, preferment of his children, or payment of his debts, and dies, his heire under age, here is neither dying seised, nor descent;  
and

Co.Re.8. Dig-  
bies Ca.165.b.

Re.10.85.a.t.  
Leon. Lowes  
Case.

Dyer 150.b.  
St.34.H.8.ca.5.  
Coo.8.Sir Ri-  
chard Pexals  
Case. 85.a.

and yet the Statutes gives a third part of these lands to be in ward during the minority of his heire, notwithstanding it shall at his full age goe according to his fathers disposition, because the conveyance was only avoided during the minority for benefit of Wards by the Statutes, and not utterly void, but these Statutes doe in no case give wardship, where there is no heire, as where the father after such conveyance is attainted of Treason, and dyed his issue, being under age, here the third part shall not be in ward by the Statute, because the Ancestor dies without heire, in regard of a corruption of his blood.

And note, where the Ancestor deviseth by his last will land holden, &c. to his wife, yonger children, &c. the will is not avoided only, during the minority for the benefit of wardships, as in the said Cases of acts executed, but the will is utterly void for a third part by those Statutes, and therefore he hath the third part by course of descent by the Common Law, and the will is good only for the other two parts, whereof there shall bee no wardship but only for the third part descended,

descended, which the heire also shall have a son plein age, notwithstanding the will, for if a man devise a rent out of all the lands holden, &c. this is void to charge a third part of the lands, notwithstanding the land descends, charge of the rent. Coo. 3. But. & Bak. Case. 35.

But where the land holden, &c. are deviseable *per custome* in London, and some other townes, there all may be devised, and the will is not void for a third part, because the land was deviseable before the Statutes which are in the affirmative, and therefore doe not destroy the custome, but the case: But the saying of these Statutes doe avoid the will *pro tempore*, and give a third part to the King for a wardship during the minority, &c. And yet the heire is barred by custome to have the third part at his full age, as before in the third case of disposition by act executed he is barred by the conveyance. Coo. Re. 3. 35. a. b. But. & Bakers Case.

It is seen who shall be said to be a person having of lands, tenements, or hereditaments holden within the meaning of these Statutes, and that will best appeare by cases of difficulty, for of common persons having of lands, &c. I purpose not to speake, plaine matters need no demon-

Coo. 3. But. &  
Bak. Case. 35.2.

demonstration, a disseised of land *in capite* which is put out of possession, and hath only a right of lands, holdeth of a common person Soccage lands, he is a person having of lands within these Statutes, because in the judgement of the Law, he hath the land to many purposes, and therefore devise, &c. by him of his other lands holden in Soccage, is good only for two parts, and his heire shall bee in ward, &c. for the third part.

Coo. 11. Re.

Henry Harpers  
Case. 24.

Coo. 10. Leon.  
Lowes Ca. 89.

If a man have only a fruitlesse reversi-  
on without rent expectant upon an estate  
tayle, or for life of lands holden, &c. and  
devise but two parts of his other lands  
holden in Soccage, a third part shall bee  
saved for wardships and primer seisin, &c.  
By these Statutes.

Coo. Leonard  
Lowes Ca. 81.

But if the first grant away this reversi-  
on, then he may devise all his Soccage  
land, because at the time of the devise, hee  
is no person having, &c.

But if he that hath a remainder, &c. ex-  
pectant upon an estate tayle, or a lease  
for life of lands holden, &c. deviseth all  
his Soccage lands, and dies before his  
remainder shall fall into possession, this  
devise of all is good, because he is not a  
person

person having of such estate in lands holden, &c. as by the common Law yeeldeth wardship, and therefore out of the purpose of the Statute, and so note the diversitie betweene a reversion and a remainder upon the Reason of the Cases thereof before, Title Marier,

Inheritances which of their nature are not of any certaine yearely value, as a Franchise to have felons goods, Court Leetes, waifes, estraies, advowsons, &c. holden of the king, &c. shall restraine the owner thereof to devise a third part of his Soccage land, because he that hath these, is a person having hereditaments within the meaning of these statutes.

3.H.7.36.

Coo. 10 Leon.

Lowes Case.

82.2.

But where a man hath Soccage land, and hath also a rent that was holden by knights service *in Capite* extinguish in his Tenancy, he may devise or dispose of it by act executed, all his Soccage lands, and there shall be no wardship of a tierce part, because that the rent being extinct, he was not a person having thereof at the making of his last will, &c.

Cars Case. 29.

Eliz. cited in

Coo. 3. Bur. &

Bak. Case.

30.2.

So where the husband and the wife be both Jointenants of an estate in Fee after coverture, the husband shall not be said a person

Coo. ibid.

Stat. 34. H. 8.

Coo. 8. Re.  
Wights. fo.  
163. b.

person having of this land, because hee alone is not owner of this land, and so generally, he that shall be said a person, having of land holden, &c. to be within these statutes, must be sole seised, and not joyntly with another.

Coo. 10. Leon.  
Low. Ca. 82. b.

Thirdly, as these words are in these statutes having lands, doe import sole ownership of the land holden, so they doe also import and appoint the time of such ownership to be the same instance when hee makes disposition or devise of these lands, so that the time of having, holding and disposing ought to concur, where if a man convey to his yonger, or to his wife, &c. his lands holden, &c. in Fee simple, either absolutely, or with power of Revocation, having a third part, which is Soccage land to descend, and after purchase more land holden in Soccage, he may devise all his new purchased lands, because at the making of his will, he had no land holden, &c.

Coo. 11. Re.  
Harpers Case.  
24. 2.

So if a man have Soccage land, and convey it as Joynture to his wife, &c. and afterwards purchased lands holden, &c. and devise two parts thereof and dieth, his heire under age, no part of the Soccage

Coo. 10. Leon.  
Low. Ca. 83. b.



cage land shall be taken to make a third part of the whole for wardship, &c. because when he made the conveyance of the Soccage lands he had no lands holden, and therefore the conveyance good for the whole.

But if a man having soccage land of 20.li. yearly value, deviseth it to his yonger children, or to a stranger, and afterwards purchaseth land holden of the yearly value of 20.li. and dieth, the devise is not good for all the soccage land, because the VWill tooke not effect before his death, and before the land holden, &c. See now the difference betweene the last Case of conveyance by Act executed, and this of devise.

But if a man having land holden in Fee, and soccage land, deviseth this soccage land, and after hee aliens his his land (*bona fide*) this devise is good for all the soccage land, because when the VWill tooke effect, he had no land holden to cause a wardship or Primer seisin.

Coo. 3. But. &

Bak. Case.

Coo. 10. Re.

Leon. Lowes

Case. 84. 1. r.

Fourthly, it is to be considered, who shall be said to be a wife or a child to be within these Statutes to be advanced, and then what estate shall be said an advancement of such wife or children.

A

Coo.8. Virgill  
Parkers Case.  
173.b.

A disposition for the advancement that a man intend to marry, though at the time she be no wife, if after he marry her, she is made a wife within the intent of these Statutes, as if at the disposition made she had had him.

14 El. Dyer  
313.b.  
Coo.10. Leon.  
Lowes Case.  
83.a.t.  
Coo.6. Report,  
Sir George  
Carsons Case.  
77.a.

If by Act a man disposeth of all his lands holden to his bastard, or to one of his collaterall blood, not being his heire apparent, or to his grandchild in the life of the father, these Statutes give no wardship nor Primer seisin of a third part, no more than if the deposition had been to a meere stranger, because these are not children in judgement of law, and then the conveyance remaines as it was, at the common Law, good to all, because the Statutes provide for wardships, or primer seisin, but where the conveyance is made to a childe.

But if after the fathers death, the grandfather conveith the land to the use of any of his children, there shall be wardship, &c. for a third part, because by the fathers death the care of the children is cast upon the grandfather by the law, as of his owne children, and therefore they are to be taken children within the statute.

Then

Then to see what shall be said an advancement of such wife and children; if the land conveyed to the wife and children by the said father or grandfather, be levied to her & her husband to her use, of the wifes lands, therefore there shall be no third part in ward, because this conveyance is no advantage to her in regard the land was originally hers, and moved not from her husband, & therefore out of the statute. Coo. 9. Floyers  
Case. 126.

So if a man convey land to his wife for life, the remainder for one of his sons, the remainder is no advancement to the sonne, to give wardship either for the body or third part of the land by these statutes, because the mother is the Kings tenant during her life by advancement, and such a remainder which may give wardship of body and land at the Common Law, is onely intended; by the word Remainder in these Statutes, which this Remainder doth not, the reason is about the title of the ward. Ibid. Coo. 2.  
Binghams  
case. 94.

But a remainder which is in part of a reversion, as if a man makes a lease for life or yeares, and after grants the reversion for life or in taile *le remainder in fee* to his sonne, and after the grant for life, or

D

Donee

Coo. 10. Leen.  
Lowes ca. 81.2.

Coo. 9. Helis  
Case. 132. b. 5.

Donee in taylor dies without issue, it shall be said advancement within these Statutes, and shall give cause of wardship of the body during the life of the tenant for life, because this remainder by common Law, shall draw ward and marriage; as also a reversion doth in such case give wardship, because he in reversion is immediate tenant to the Lord, and not tenant in taylor, or for life.

If the son and heire, or any other son purchase land of his father (*bona fide*) for money, &c. this is no preferment for the childe within these meaning of these Statutes, and therefore there shall bee no third part of these lands taken for wardship, or primer seisin, because it was land purchased by the childe, and not given by the father to prefer him.

Coo. 3. But. &  
Bakers Case.

This Statute gives authority *disjunctive* to make a disposition either by act executed, or by will of two parts of land holden, &c. And thereupon if a man by act executed in his life time, dispose of two parts for the advancement of his wife, and preferment of his children, and payment of his debts, he cannot devise the third part thereof, because he had  
executed

executed his authority before, but if hee had aliened two parts to a stranger (*bona fide*) then he might also devise two parts of the third part remaining, because his alienation to a stranger is out of these Statutes.

If a man alien two parts for advancement of his wife, &c. he may also make a feoffment of the third part to a stranger, or he may make a feoffment of the third part to the use of his last will, and by his will may declare the use of that feoffment to a stranger.

Re.6.18. Sir  
Edw. Clerke  
Case.

But here note that the land passeth by feoffment, and not by will, and that the will served but as a limitation of the use upon the feoffment, and yet in that case, a third part of the two parts first disposed of shall be in ward.

If a man by act executed conveyes two parts for life in taile for advancement of his wife, &c. he may also devise the reversion of the same two parts, because the Statute gives him full power over the two parts to dispose it as he will, by will or otherwise.

35.El.Clem.  
Howards Case  
cited in Co.  
10.Re.Leon.  
Lowes Case.  
81.1.

It is to be observed, that these Statutes are to be expounded to save a third part

for wardship and primer seisin, when the advancement continues in the advanced without alteration either by descent, or alienation, and not otherwise.

Coo. 2. Bing-  
hams Case. 93.  
b. 94. a.

Coo. 9. Holts  
Case. 132. a.

Wherefore, if the son advanced aliens (*bona fide*) or dies, and the land descends to his heire in the life of the father that gave the land, there shall be no wardship of a third part by these Statutes; the same law is, when the land is conveyed for the advancement of the wife, or payment of the debts.

Coo. Re. 10.  
Leon. Lowes  
Case. 84. a. m.

Whereas these Statutes serve to be in ward, &c. lands to the full yearly value of a third part of the whole, it is to be noted that the same value shall be accounted as the lands be of value at the Ancestors death.

Coo. Leon.  
Lowes Case.  
81. a. t.  
R. 3. 32. b. But.  
& Bak. Case.

The thing of a casuall and uncertaine value may not be left for the third part, as a franchise to have felons goods, and of fugitives, and out of fines, outlawes fines, amerciaments, which have not been accustomedly let unto farme for yearly rent, but if they have been so let, then they may be left for the third part.

But. & Bakers  
Case. 34.

The King or the Lord ought to have his third part immediatly after the death  
of

of the tenant, and shall not expect upon any uncertainty, wherefore if a man seised of three acres holden *in Capite*, &c. leaseth one acre for life, and after deviseth the other two acres, and dyes, and after the tenant for life dies, yet the devise is void for a third part of the two parts, because the third part did not descend immediately to the heire.

In construction of these Statutes, an equality hath been used, so that for the levying and making up of a third part saved by these Statutes, parties alike interested shall equally and alike be respected, wherefore if a man have three severall Mannors holden of three severall Lords by Knights service, every Mannor being of equall value, he cannot devise two Mannors, and leave the third to descend according to the generality of the words of these Statutes, for then he should prejudice the other two Lords of their wardships, but he must devise two parts of every Mannor, and leave to descend a third part of every Mannor, to make a wardship to every Lord.

So if a man seised of land holden, &c. disposeth before mariage one moiety for a

35.H.8.Bro.  
Testaments

Coc.8. Virgill  
Parkers Case.  
173.b.

Coc. Virgill  
Parker. 173. b.

land holden be defeated by condition after the Tenants death.

Coo. 3. But. &  
Bakers Case.  
34. b.

And so the estate of the Tenure ought to continue after the death of the Tenant; wherefore if the King gives land to one, and his heires to hold during the life of the Patentee by Knights Service *in Capite*, and after his death in Soccage, or *E converso*, here shall be no wardship or primer seisin, neither by the common law, nor by these Statutes, because in the first case the Tenure continues notwithstanding the Tenants death, and in the second case, the Tenure to make a new lease commenceth in the son only.



### Collusion to avoid W

St. Marle. b. ca.  
6. Pl. Com.

**I**F Tenant enfeoffe his son or his parent, or his collaterall heire, or his parent, to make him have an estate as a purchaser, and so to beguile the Lord of his wardship, because the heire comes not to the land by descent; this is collusion apparent, and manifest against which



which by the Statute of Marleb. made Anno 32.H.3. It was provided that the Lord shall notwithstanding have the wardship of his heire.

There is also collusion which is not so manifest, as when the Tenant enfeoffes others upon collusion between him and them had for the benefit of the heire, and to prevent his wardship, and this collusion is averable, against which also this Statute of Marleb. provideth.

To instance in particular cases what said, collusion within these Statutes of Marleb. and what is not, is needful to see the cases thereof are too many to be treated of in this Treatise, as for that by the Statute of 34.H.8.cap.5. a more strict law is made against Collusion than by that former.

Before the statute of 34.H. Inst. fo. 78. a. 2. If a Father had slept but a little further, and had made a Feoffment to his son and his heire, and to a stranger, all the inheritance were limited to the heires of his heire, and that the stranger had but an estate for life.

Or if the Father had made but an estate for life or taile to his sonne and heire

joynture of his wife that shall be, and after marriage disposeth the other for payment of his debts and legacies, and the third part for the King, as other Lords shall be equally taken out of both halves, and not out of the halfe last disposed.

Coo.9.133.b.  
Mar.Menes  
Case.

Coo.9.Tho.  
Holts Case.  
132.2.

So if the other devise the land, to his eldest son one part, and so to foure other sons like parts, whereof one part only is holden, &c. the third of the whole shall be made up equally out of every severall third part of a younger brother a like quantity, if the King or the Lord hath once the benefit of the Statutes against one son, the Statutes are satisfied, and he can have no further benefit thereof against another son, as if the father convey land holden, &c. to one son in tayle the remainder over to another of his sons in tayle or in fee, and after the fathers death the King or the Lord hath wardship and primer seisin of a third part, and then the first son dyeth without issue, the King or Lord shall not have the benefit of the Statute against the son in the remainder, for the Statutes doe extend to the first son advanced only, if he survive the father, and then be owner of the land.

Wherefore,

Wherefore, if a man have lands holden, &c. of the yearly value of 20. li. and Soccage lands of 10. li. yearly value, he may devise all the lands holden, &c. and leave the Soccage land only to descend for wardship and primer seisin, and the Statutes are satisfied, and the heire shall sue Livery for one of the acres holden, &c. though no land be descended to him, if the land be holden of the King by Knights service *in Capite*.

20. El. Cal-  
throps Case,  
cited in Co.  
3. Re. But. &  
Bik. Ca. 31. a b

So if a man have land only holden, &c. And conveyeth the whole for advancement of his wife, preferment of his children, and afterwards purchase so much land in Soccage as amounteth to the third part of the land holden, and leaves this to descend, this Statute is satisfied, and the conveyance is good for the whole land holden, &c.

Co. 10. Leon.  
Lowes Case  
84. b.

And note, that to make wardship upon these Statutes, the estate of the Lord holden, ought to continue after the Tenants death; And therefore if a man have an estate tayle only of land holden, and hath Soccage, and dyeth without issue, so that the estate tayle is spent, the devise is good for all the Soccage land, so if the

Co. 10. Leon.  
Lowes Ca. 84.

land holden be defeated by condition after the Tenants death.

Coo.3.But.&  
Bakers Case.  
34.b.

And so the estate of the Tenure ought to continue after the death of the Tenant; wherefore if the King gives land to one, and his heires to hold during the life of the Patentee by Knights service *in Capite*, and after his death in Soccage, or *E converso*, here shall be no wardship or primer seisin, neither by the common law, nor by these Statutes, because in the first case the Tenure continues not after the Tenants death, and in the second case, the Tenure to make a wardship commenceth in the son only.



### Collusion to avoid Wardships.

St.Marle. b.ca.  
6.Plo.Com.

**I**F Tenant enfeoffe his son and heire apparent, or his collaterall heire apparent, to make him have an estate in land as a purchaser, and so to beguile the Lord of his wardship, because the heire comes not to the land by descent; this is collusion apparent, and manifest against which

which by the Statute of Marleb. made Anno 32. H. 3. It was provided that the Lord shall notwithstanding have the wardship of his heire.

There is also collusion which is not so manifest, as when the Tenant enfeoffes others upon collusion between him and them had for the benefit of the heire, and to prevent his wardship, and this collusion is averable, against which also this Statute of Marleb. provideth.

To instance in particular cases what shall be said, collusion within these Statutes of *Marleb.* and what is not, is needlesse, because the cases thereof are too many for this Treatise, as for that by the said Statute of 34. H. 8. cap. 5. a more ample provision is made against Collusion, then was by that former.

Wherefore before the statute of 34. H. 8. *Inst. fo. 78. 2. c. 1.* if the father had slept but a little further, and had made a Feoffement to his sonne and heire, and to a stranger, although the inheritance were limited to the heires of his heire, and that the stranger had but an estate for life,

Or if the Father had made but an estate for life or taile to his sonne and heire

heire, and limited the remainder, and granted the Reversion to another, or had left the Reversion in himselfe, or if the father had enfeofed a stranger for the advancement of his younger sonnes or of his daughter, or for the paiement of his debts, and after doe enfeoffe his heire, in all these cases the Lord had beene prevented of the wardship of his Tenants heire, and he not helped by the Statute of *Marleb.* because those conveyances were in judgement of the law no Collusion, neither apparent, nor averable within the intent and meaning of the said Statutes.

Coo.6. Sir  
George Cur-  
sons case. 76.

Re.8. Rep.  
Wights case.  
163. In 1678.

But now by these Statutes of 32. H. 8. in all these cases and the like, Collusion may be averred for a third part of the Land so conveyed: and the conveyance *pro tempore* avoided, or the wardship, *primer seisin*, in case of land holden of a common person, and for wardship of *primer seisin* in case of land holden of the King for a third part of the land, but as these Statutes in many other cases gives remedy to the King and other Lords, where they had none before: so in other cases these Statutes give the Tenant benefit, where he had none before.

And

And therefore, where the King or the Lord by the Statute of *Mareb.* might take advantage by Collusion apparent; or where the Tenant conveys the land to his sonne and heire under age, of an estate in fee simple, might have had the whole land so conveyed by fraud in ward, now by these Statutes, because they did enable him to convey the two parts for preferment of his childe, the King shall have but a third part in such case, this Statute of 34. *H. 8. cap. 5.* concerning Collusions to this purpose, that if the Tenant being seised of an estate of inheritance doe by Act executed in his life time, convey by covin to any person his land holden, &c. for, or with divers Remainders over in Fee to a stranger, or to his owne right heires, or shall make by fraud contrary to this Act, any estate, conditions, mesnalties, tenures, or conveyances, to the intent to defraud the King or the Lords of these wardships, &c. which ought to come to them after their tenants death by force of this Statute, and of the Statute of 32. *H. 8.* the said estates and conveyances being found by Office to be so made by covin.

There

Coo. 8.  
Wights case.  
164. b. c. 1. 1. 1.  
Coo. 10. Leon.  
Lowes case.  
82, 83.

10. Ellis D. 1.  
164. b. c. 1. 1. 1.  
Wights case.

1. &amp; 3. Eliz.

Dyer 193.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

1001. 1. 1. 1. 1. 1.

There the King shall have the wardship and other profits, &c. according to the intent of the said Statute, as though no such estates had beene made, untill the said office be lawfully undone by traverse or otherwise, and other Lords shall have their remedy in such cases, as their wardships of body and lands by the Writ of Wards, and shall distraine and averre for their relieves, heriots, or other profits, as if no such estates had beene made.

10. Eliz. Dyer

276.

Re. 8. 165. a.

Wights case.

But observe, that it is adjudged upon these Statutes of 32. H. 8. and 34. H. 8. that where a third part is left out of such conveyance to be in Ward, &c. no covin or collusion can be averred for the other two parts disposed of by the Tenant, though the covin be found by Office, because the intent of the said Statute is, that the King, and other Lords should be satisfied with a third part, which is here left unto him.

If *A.* with his proper money purchase land holden, &c. to himselfe, and *B.* an Infant, and their heires, this cannot be averred to be Collusion. to avoid wardship, Primer seisin after the death, within the intent of these Statutes, because *A.*

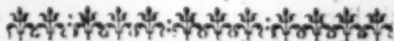
was



was never sole seised as he ought to be by the provision of these Statutes, and no feoffment which *A.* can make of his moiety can be averred to be Collusion, because if no feoffment were, no benefit of wardship could accrue *per son Mort.*

If the sonne and heire purchase (*bona fide*) for money, his fathers lands holden, &c. this shall not be taken to be a conveyance of Collusion within the Statute of *Martlet.* nor within the Statute of 32. & 34. *H. 8.* to have a third part to the King or other Lords for the wardship, because by the third part it cannot be found preferment of him within the meaning of this Statute.

*Re. 10. 83. b.*  
Sir Nicholas  
Strange's case,  
cited in Leon.  
Lowes case.



### Marriage.

**T**He Tenure of Knights service, as it gives the King or the Lord the wardship of the lands of the heire under age, so it gives him also the custody of the body of the heire male till his age of 21. years, & of the heire female, if she be under the age

age of 14. yeares, and unmarried at the death of her Ancestor, till her age of 16. yeares, whereof see before *Sect. 6.*



### Reliefe.

14. H. 8. 49. &  
156. Tenures.  
Br. Reliefs.

**I**ncident to all manner of Tenures, be they King or common person, except the Tenure of the King by Fee-farme, which therefore yeelds no Reliefe, because the Farme or rent thereof is in the judgement of the Law accompted a full value of the Land, except Tenures in *Frankle Allo moigne* by divine service, and the like.

Co. 3. Penants  
case. fo. 66.  
Lit. fo. 18. b.

But Reliefe is no service whereby the land is holden, but a profit or improvement of the services, as a blossome falne from a tree, and it is due immediately upon the death of the Ancestor.

The Reason why it is payed, as also the name thereof is given by *Brooke*, thus, *Cum homagio facta fuerit, & fidelit. Succ. ab illis cum plenitas existens. oportet statim quod Tenem. quod fuit in manibus Antecessoris*

cessoris, & hereditas qui jacens fuit eo-  
rum decessum relevatur in manibus habend.  
& propter talem Relevationem facienda  
vrit ab heredibus prestatio qui dicitur re-  
levin.

This excludes all purchasers from pay-  
ing Reliefe, as hee saith also in another  
place, *Dabit Relevin qui succedat juri  
hereditario, non qui acquirat.* And with  
this agreeth the current of our bookes  
now at this day, and common experi-  
ence; and this also excludes inheritances  
which goe in succession; and therefore  
all Corporations, because they never die,  
so that their land descend not, pay no  
Reliefe, because the successor hath not  
the land, *Jure hereditario*, but by prescrip-  
tion; a Corporation may pay no Reliefe,  
the heire ought to be of full age at the  
death of his Ancestor, or else he is not to  
pay any Reliefe, as appeareth by *Br.*  
and by all other bookes, and the full age  
for this purpose as of the heire male of Te-  
nant by Knights service 15. 21. of his  
heire female 14. as also of the heire of  
the Tenant in Soccage his age of 14.  
hence it is plaine, that where the Lord  
hath the wardship of the heire of his Te-  
nant,

Brac. fo. a.

11. H. 8. 422.

22. Ed. 4. Re-

liefe 8.

Bro. Reliefe 9.

3. H. 4. 2.

Lit. fo. 242. b.

Mag. Carr. c. 3.

nant, that at the full age of the heire hee shall have no reliefe : And this is true, although the Lord hath only the land in ward, and not the body, whereof if the Lord hath by the priority the body and the land holden of himselfe in ward, the other Lords by posteriority at the full age of the heire, shall have no reliefe, because they had every of them the land holden of themselves in ward.

Inst. 83. b.  
Stam. pr. 96.  
24. E. 3. 14.  
Ver. Na. Br.  
93. a.

But where the heire is left under age, and the case is so, that the Lords of whom the lands descend is holden, cannot have the land in Ward, there at the heires full age he shall pay reliefe to such Lord ; as where a man holds his land of the King by Knights service *in Capite*, and of other Lords by Knights service, and dies, his heire being under age, and the King seisseth the wardship, and all his lands which he holds of others, the heire at his full age is to pay reliefe to the other Lords, because they had no lands in Ward.

Inst. 83. b.  
Eit. fo. 24. b. s.  
112.  
Coo. 7. Nevills  
case. 33. b. 1.

The reliefe for a Knights fee of lands holden by Knights service *in Capite*, is the fourth part of the value thereof, viz. 5. li. for a whole Knights fee, being anciently valued but at 20. li. *per annum*, And so after

after the same proportion for a greater and lesser quantity ; whereof see before in Tenures.

Of land holden by grand Sergeancy, Lit.fo.35. the reliefe payable to the King, is the value of the land by the yeare, above all charges and reprises.

The remedy for a subject to get his reliefe, is to destraine for it, if it be not had in the life of the Lord, his Executors remedy is an action of debt against the heire. 7.H.6.13: Inst.83.a.

In the Kings case, where reliefe is due to him, the use is in the writ of Livery, to the heire, and directed to the Escheator to command him to take surety of the heire for payment of the reliefe, but hee seldome or never doth the same : but them of the Exchequer to whom the charge in this kinde belongs upon record of the Livery, send out summons against the Tenant for the said Reliefe, and upon the Sheriffes Return of *Nihil, &c.* Proces of Extent for the same.



## Of Livery.

**I**F after the death of the Kings Tenants *in Capite*, his heire enter into the land to him descended before he doth his homage, and hath received his seisin from the King, he is by law an intruder upon the Kings possession, and shall forfeit all the profits of such lands to the King from the time of his intrusion, untill he have sued out the Livery, and hath no freehold of the land in him, insomuch that he can neither make a feoffement, nor other disposition thereof, nor shall his wife bee endowed thereof, but for restitution therunto, and the profits thereof, he is driven to sue to the King for his speciall grace and pardon.

To prevent which penalties, the Law requireth that the heire doe (at times) therefore by the Law appointed sue to the King to have such lands re-delivered unto him by his highnesse, which is called in Law, saving of Livery, till which be done, the

3.H.7.2.  
Stam.præ.Rs.  
fo.12.14.b.

They cannot  
seize before  
the office.

the Escheator in the Countie where the land lies may (to the Kings use) seise and take the whole profits of the land, which notwithstanding is not used to be done till office be found, and then the King is in possession without seisure, and is to be answered of all profits since his Tenants death, till Livery sued forth, then he doth his homage, and hath the land delivered unto him out of the Kings hands, and payeth the King his Primer seisin, whereof see before in the last Title.

Coo. 9. Sir  
Geo. Reinolds  
case. 95. b.  
Coo. 8. Hales  
Case. 172. b.

But because to your suing of Livery many things are to be done with great care, and still the Lord gives the heire 6. 3. moneths time for the prosecuting thereof, if the heire at his full age, having been in Ward, or at the death of his ancestors, if he after his full age tender his Livery, and pursue it with effect, he shall have as much benefit by his tender, as if he had done homage, and had sued his Livery; And therefore if the heire after the tender dies within the said 6. 3. moneths, so that the prosecution of the Livery is become impossible by the act of God *In providentia excusat legem*, and the interest of the King to Primer seisin is

Coo. 8. Hales  
Case. 172. b.

Coo. 9. Holts  
Case. 132.

determined, as if he had taken homage of the heire when he made his tender, but the meane rates if any were forfeited, are not discharged.

Instructions by  
the new insti-  
tutions the  
surveor.

And so for the same reason, the heire after such tender may bargain and sell, or make other disposition of the land, and the same is good in law if he die within the said 6. moneths, and hath as much power over it, as if he had sued his Livery, this tender at 6. moneths end is used to be continued over for 6. more, and so from 6. moneths to 6. moneths, as long as the Master of the Wards shall give leave, and in the meane time the heire hath like benefite thereof, as if he had sued his Livery.

Inst. 77.2.

Livery shall not be sued but where the Kings Tenant dyed seised of lands holden by Knights service *in Capite*, or Soccage *in Capite*.

Stat. Marleb.  
ca. 16. 28.  
F.N.B.61.

If the Tenure be Knights service *in Capite*, the King hath the same prerogative for his Livery that he hath in case of Wardship, whereof see before to have a Livery sued of lands holden by his Tenant of others, either by Knights service, or Soccage, or for lands which he hath in Ward



Ward by reason of Ward, or that are holden of his Tenants, or that are holden of a Bishop by a Tenant that dyeth, while the temporalities of a Bishoprick are in the Kings hands.

But if the Tenure be in Soccage *in Capite*, the King as he shall have primer seisin, and a Livery to be sued of no other lands holden by his Tenant of others, besides the land holden by Soccage *in Capite*; so also the heire of such Tenant shall not sue Livery, nor pay primer seisin, if at the death of his ancestor he bee under the age of 14. but in every of these cases, they to whom the body belongeth shall have an *Ouster le maine una cum exigibus*, viz. the Lord of whom the lands are holden by Knights service.

And here in the last case, howbeit when he attaines his full age of 14. yeares hee must sue Livery, or else shall lose the meane rates,

But bee the heire of the Tenant by Knights service *in Capite* under age at the death of his ancestor, yet at his full age he shall sue Livery, although he hath been in Ward, as well as though he had been of full age at the death of his ancestor;

4. El. Dy. 112.  
F.N.B. 256.b.  
32. H.8 Br.  
Gard. 97.  
45. E. 3. 10.  
35. H. 8. 6. 52.  
F.N.B. 259.  
Inst. 77.

20. Eliz.  
Dyer 362.

West. 1. cap. 22.  
St. 39 H 6. ca.  
2. a. Stat. prae.  
Rs. 13.

though with some difference for the primer seisin, as appears, Title Primer seisin.

The time after the death of the Kings Tenant for his heire to sue Livery, is of lands in question holden by Knights service *in Capite*, be the heire in Ward, and then comes to full age, or be of full age at his ancestors death, then *viz.* the heire male at 21. the heire female above 14. at the death of the ancestor, then if the possession of the free-hold doe descend immediately after the ancestors death to the heire, the Livery is to be sued forthwith : If only a reversion doe descend, then not till after the death of the particular Tenant, if it be a reversion without rent incident thereunto ; howbeit the heire at this day hath election either to sue immediately in the life of the particular Tenant, paying for Primer seisin but halfe a yeares value, or to tarry till after his death, and then to sue it, and pay a whole yeares value of the land, but if it be in reversion with a rent incident thereunto, and he sueth out his Livery in the life of the Tenant, he may doe so, and shall pay for Primer seisin but one yeares value of the rent.

Inst. 77.2.  
Dyer 14.  
Eliz. 308.b.

And

And the time of the heire of Tenant by Soccage in *Capite* to sue Livery is, immediatly upon the death of the Ancestor, with the same observation of possession, or Reversion, as is for the heire of the Tenant by Knights service in *Capite*, if he be above 14. years of age at the death of his ancestor, and if hee be under, then hee is to sue no Livery till he be 21. yeares, as is afore shewed.

Coo. 9. Hales  
case 132.b.  
Re. 9. 81. Leon.  
Lowes case.

But the time which the law hath appointed for Soccage of Livery may by Accident be altered or changed, as where the sonne and heire is a Knight in the life of his father, and his father dies before he be of full age, his Livery must be sued or tendred immediatly on his fathers death, and before his full age, because the King by Knighting him, hath adjudged him of full age.

Co. Re. 9. 173.  
Sir Hen. Constables case.  
Coo. Re. 6. 74.  
Sir Dru Dru-  
ries case.

So in *diebus illis*, if the father had entered into Religion, his heire being of full age, his heire should have sued Livery presently, and should not have expected his fathers naturall death.

No Livery can be sued of lands above the yearely value of 5. li. before office found before the Eschator or other Com-

Stat. 33. H. 8.  
cap. 22.  
14. Ed. 4. 5.

missioners by vertue of the Kings Writ or Commission directed out of the Chancery or other Courts that have authority to make such writs or Commissions for suing of Livery.

St. 33. H. 8. c. 22

But Livery of lands under the yearly value of 5. li. may be by warrant made from the Court of Wards and Liveries be sued forth, although there had been thereof no office returned.

F. N. B. 253.

Ib. in Stam. 52.

The reason of this is, that the King may be certainly informed by matter of Record, who shall be his Tenant, and whom he ought to make Tenant, and this cannot be but upon an office, or by a speciall Writ or Commission, in nature of that Writ or Commission to enquire of all wards, or the like.

### And these Writs or Commissions are of two sorts.

14. Ed. 4. 5.

These of the first sort are to enquire after the death of the Ancestor of what lands holden of the King, or of others, the Ancestor was seised at the time of his death, the value, the day when he died, who is next heire, and of what age, of this kind

kind are *diem claus. extremum*, which is sued within a year after the ancestors death.

*Memorandum*, if there be no suite *Stam. pr. R.* made within the yeare after the ancestors death, and upon these writs the Jury *F.N.B. 253. c.* ought to enquire, who tooke the profits since his death.

*Deneverunt*, whether the Ancestor died *Ibidem.* in ward to the King.

### Or Commissions of the nature of these Writs.

These of the second sort are such as issue upon some defect in offices, and found upon the five first writs of this kind, are

*Qua plura*, where some of the An- *F.N.B. 255.* cestors lands are left out.

*Melius inquirendum*, Inquired upon some defect in the former office.

But if the heire were of full age at his Ancestors death, and so found by office, then he shall have Livery upon that office without any estate *probanda*.

*Datum est nobis intelligi*, where after the delivery of the writ, and before office found before the Escheator dieth, or is removed from his place.

But

Stat. 33. H. 8.  
cap. 12.

But now these Writs or Commissions since the erecting of the Court of Wards may passe out of the Chancery or other Courts having authority to make them, & by warrant or bill signed and subscribed by the Master Surveyor & Attorney and receiver, of the Court of Wards, or one of them, directed to the chancellor of England or other chancellor or officer having power to award such writs; if upon office found upon any of these writs, the heire be found under age, and in ward, & after do accomplish his full age, he must have a writ of Estate *probands*, to prove himselfe of full age before he shall have Livery.

F.N.B. 154.2.  
257.

13. H. 4. 6.

But if the Tenant be found within age, & in ward, and after his full age other lands descend to him, which the King seisseth, by an office that finds the heire of full age, he must sue an estate *probands* by reason of that office which found him within age, which is the best Record for the King.

Stam. pr. Rs.  
12.2. *infra* title  
Ouster le main

If generall Livery, or *Ouster le main* be not rightly pursued according to the order of Law, the King may receive the land without any proceffe, and shall be answered of all the meane profits from the suing of the Livery. A

A livery is not rightly pursued according to the order of law when it is sued by parcels, as if the heire sue Livery but of part of that which is found by office, as where the Ancestor had lands in severall countries, if the heire sue a generall Livery before office found in every county where he hath land, omitting them in the Livery, the Livery is void, and the King may have reliefe; whereof see a whole Title in *Stamf. Prerog. Regis, fo. 8. 6. &c.*

But in some case a Liverie may be sued of parcell, as where land discends to two daughters; one of the full age, the other under age, shee of the full age shall have the Livery with a partition suitable of all things, and this Livery is well sued, though it be not of all the land descended; but things not severable, as advowsons, or the like, must still remaine in the Kings hands till the other daughter be of full age.

And note, that between Coparceners the King upon the Livery alwayes makes partition, and this is for the Kings benefit, in that upon partition every one shall have a part of the land holden *in Capite*, for if any of them should have for her part the lands holden of others only, then the

the King shall lose his prerogative in that part for ever; wherefore in the writ of Livery in such case, there is a proviso, that every of them should have for part, parcell of the lands holden *in Capite*.

1.H.7.28.

When two are found heires by one Title, be they twins male, and found heire by the same office, divers men by severall offices are found heires to the same ancestor, and by the same title there, because it is doubtfull to the King to whom to make a Livery, untill the certainty and the verity be discusst betweene them; then his highnesse ought to make a Livery to him that is proved to bee the true heire to the common ancestor; the manner of this triall is by Interpleader, and in what cases it shall be, and in what not, you may see at large in *Stamf. pra. Rs. fol. 51. 65. & 66. b.*

The manner of suing a generall Livery may be seen in *N. B. 258. viz. Samf. pra. Rs. 79. 80.* and for this purpose see also the Statute 33. *H. 8. c. 22.*

*Stam. pra. Rs.*

67.2.

*Inst. 77.2.*

But at this day generall Liveries are out of use, and for the most part men use to sue speciall Liveries, which contain in them a pardon for all entries, intrusions, issues,



issues, profits, and likewise to dispense with all misusings which may happen upon a generall Livery, &c. But these bookes must be understood where the lands are found in the office to be above 20. li. yearely value, for otherwise generall Liveries are most in use.

Thus speak our books, but by the common experience of the Court of wards, and liveries since the Stat. of 33. *H. 8. c. 2.* are distinguished, and sued in this manner, *viz.* A generall Livery under value, which is when the land whereof Livery is to be sued, is found by the office not to exceed 5. li. *per annum*, and the lesse fees are appointed by the said Statute for the suing forth thereof.

A generall Livery above value, *viz.* when the land is found by office to be above 5. li. yearely value, and under twentie pounds *per annum*, and then greater fees are allowed by the said Statute, and upon suing either of those Liveries, no other Primer seisin is payed then the meane profits of the lands, inured from the ancestors death to the suing of the Livery, according to the description thereof by the Stat. *Præ. Rs. cap. 3.* See before  
Title

Title Primer seisin; which meane profits may also be saved by tender of the Livery, and so the King hath nothing for Primer seisin.

And lastly, a speciall Livery which the Court of Wards sayes ought not to be sued, unlesse the land be above the yearly value of 20. li. found by office, and if a man will sue a speciall Livery for lands of a lesse value, he must confesse his land to be above that value.

Howbeit, the law is taken otherwise in our bookes, where mention is of a speciall Livery, without speaking of the value of the land, and reason proves it may be so called, because it containes a speciall pardon of all entry, intrusions, meane rates, &c. which may well be granted upon a lesser quantitie of lands, as upon a greater, and upon this speciall Livery, no primer seisin other than the said meane profits is taken by the name of a primer seisin, but they use to take a sum of money to the Kings use by the name of a fine for his Majesties speciall grace, and pardon vouchsafed to his Majesties Subjects by the said speciall liveries to be sued of, and in possession, and the heire hath  
not

not him in ward, or if the livery be so sued of, and in possession, and the heire hath not beene in ward; or if the livery be to be sued of a Reversion halfe a yeares value, which agreeth by the common proportion above in the bookes, named primer seisin, and upon tender of any of these Liveries, they shall use to take a bond, for that shall be due to the King up- upon Livery sued for feare of the heires death within fixe moneths before the Livery sued out; and note, that a speciall Livery gives the heire licence to enter and take the profits of the lands immediatly without suing any writ of *atate probanda*, as if a Livery had been thereof sued, and pardons all issues, meane rates and profits of the lands, but yet the same are paid before he can have such livery and pardons, all entries and entrufions by the heire, or any his Ancestors, and fines for alienations without licence, and yet they of the Exchequer notwithstanding such Livery use to send proceffe to the Sheriffe to seise the land after such alienation, and to compell the heire to pay a fine, and to sue a pardon for such alienation without licence, so that the benefit  
of

of a speciall livery above a generall, as I conceive is little other than that the heire thereby avoids the trouble and charge of suing his writ *de atate probanda*, and prevent the danger of misusing his Livery, and by consequence the reseising of this land without great inconveniences, they appeare in part in this Title, and more amply, *Prerog. Rs. fo. 19. 80. 81. &c.*

*Ouster le maine.*

Is in all other cases where Liveries is not to be sued, as where the Land is holden to be in common Knights Service of the King, as of some Honour, Manor, Castle, &c. and the heire within age, no Livery shall be sued; and yet because no man may enter upon the Kings possession without his leave, the heire at his full age shall sue an *Ouster le main cum exitibus*: but in the first yeare of *Queene Elizabeth*, it was questioned in the Court of Wards, whether it should be a Livery *Cum exitibus*, or an *Ouster le maine*, and there agreed, that *Ouster le maine* is onely of Lands in the Kings hands holden of others then of the King, but yet ordered, that

*Inst. fo. 77. a.*  
*1. Eliz.*  
*Dyer 168. a.*

that a Livery in this case *una cum exitibus* should be granted by the name of *Ouster le maine*, because the course of that Court was so by the space of 30. yeares before ; where note, that no meane rates shall be forfeited for land holden of the King by common Knights service, though there be no tander of Livery, which is the reason why *Ouster le maine* is granted *cum exitibus*.

So if the Escheator claime land by ver- Stat. de Esche-  
tue of dying, &c. before office, and after tor. mode 29.  
by the office no title is found for the E. 1.  
King, the partie that ought to have againe  
the land shall have an *Ouster le main cum*  
*exitibus*.

So if the Escheator will seise land found Stam. pr. Rs.  
by office to be holden of the Archbishop 7 8. b.  
of Canterbury, or of such other person  
as are exempt in the first Chapter of the  
Statute *d. pr. Rs.* they shall have an *Ouster*  
*le main cum exitibus*.

So of lands holdan *in Capite*, if a Lease  
be made for life the Remainder over to a  
stranger, and Tenant for life dies, this  
matter being found by Office, if the King  
seise the Land, he in the Remainder shall  
have an *Ouster le main cum exitibus*.

F.N.B.257.g.

So where two hold land joyntly of the King *in Capite*, and one dyeth, and the matter is found by office, which notwithstanding the King seiseth the land, the Survivor shall have an *Ouster le main cum exitibus*.

35.H.6.52.

F.N.B.256.c.

Stam.præ.12.b.

So if the heire of Tenant in Soccage *in Capite* be under the age of fourteene yeares at his ancestors death, and the matter is found by office, and yet the Escheator seiseth the land for a primer seisin, *le procheine de kinne* to the heire, shall have an *Ouster le main cum exitibus*, but yet in that case after the 14. the Escheator may seise, and the heire must have Livery, and for want of tender thereof, he shall lose meane rates from his age of 14.

45.Ed.3.19.a.

4.Eliz.

Dyer 213.

So if Tenant by Soccage *in Capite* die also seised of other lands holden of other Lords then of the King by Knights service or Soccage, which descend to the heire under age, and after office thereof found, the Escheator seiseth the lands into the Kings hands, the Lord of whom the land is holden by Knights service in the one case, and *procheine kinne* in the other case shall have the lands out of the Kings hands by *Ouster le main cum exitibus*;  
And

And if the heire be of full age at his Ancestors death he himsele in both cases shall have the *Ouster le maine*.

And generally in all cases whereupon the matter is discusst, it appeareth either upon the returne of the office, or upon *trover monstrous de droit ou petition de droit* and the like, as the cause shall require, that the King had no right or title to the thing he seised, there judgement is given that the Kings hands shall be amoved, and thereupon the writ of *Amoveas manus* or *Ouster le maine* is awarded to the Escheator.

By the Common Law the *Ouster le main* was never awarded *Vnacum exitibus* though it did so plainly appeare that the King ought not to have seised, but this was the helpe by two Statutes in the 28. and 29. yeares of King *Ed. 1.* by which was provided that where land is seised into the Kings hands without just cause the profit thereof in the meane time shall be wholly restored to him that ought to have had the land, and hath received the damages upon *Ouster le main exitibus*.

Stam. pr. R. s.  
fo. 77. 6. et 82.  
21. H. 7. 5.  
29. Aff. 43.

Art. Sup. Ca.  
19.  
29. Ed. 1.  
Statute de  
Escheator.

But if by the same Stat. of *Ed. 1.* it is provided that if after such *Ouster le main cum exitibus*, a title doth appeare for the King in Chancery, Kings Bench, Exchequer, &c. whereby the King is intitled of a title growne before the *Ouster le main*, although the party could have had no *Ouster le maine* if the Records had then appeared without avoiding them, yet in that they did not then appeare, he should not be now cast out of possession, without a *Scire facias* against him, upon which if he be warned, and doe not come, or commeth and say nothing against the Kings Title, the land shall be resealed, and the King resealed, & the King answered of the profits from the time of the first office, though this Statute make no mention of Livery, but only of *Ouster le maine*; yet by equity Liveries are taken to be within the meaning thereof; And here note this difference, that in the cases last mentioned, no seisin shall be before *Scire facias*, and against the party, yet in the case above, and Title Liveries; of a livery the King he may resealed without office, whereof see at large Title Refeasor, in *Stamf. pra. Rs. 856.*

Office.





whereof the office is to be found, bee of 60. pound yearly value or above, and holden of the King, the Escheator forfeits 5. pounds if hee finds any office thereof without the Kings writ directed to him for that purpose.

33. H. 8. ca. 12.

Writs or commission in nature hereof whereupon offices are to be found may not be made out of the Chancery or other Court having authority to make the same but by warrant or bill signed by the Mr. Surveyor of the court of Wards, or one of them directed to the Chancellour or officer having power to award the same writs.

Co. 8. p.  
Stoughtons  
Case. 169.

Such or the Commissions are the *diem clausit extremum Mandamus devenerunt, qua plura, Melius inquirendum & datum nobis intelligi*, the severall natures whereof in what cases they be, so see Title Livery.

To which may be added that after the *diem clausit*, or a *mandamus* awarded an office found, there shall goe forth no more writs of the same kind to enquire further therefore at the instance of the same party.

But where the office is imperfectly found against the King, in such case the King cannot travell the office, as a subject may upon surmise in the Court of Wards, that the lands are of greater value,

that

that they are holden of other services, that the Tenant was seised of another estate, that these are more heires or other heires then were found in the first office, or where by the first office the heire was found within age, where indeed, the Tenant dyed without heire, so that the land ought to escheate, or where by the first office one is found heire of full age, where he was under age, and generally where his highnesse hath a better Title then was found for him by the first office, a *Melius inquirendum* may bee awarded in the Kings behalfe.

But in good discretion, no *Melius inquirendum* should be awarded after a perfect office found against the King without view of some record or other pregnant matter to intitle the King.

Co. 8. Paris  
Stoughtons  
case 169.

If upon the *Melius inquirendum* the office be found against the King, he shall not have a second *Melius*, but is found by the office even as a subject, as against whom his traverse, web see Title Traverse.

Ibidem 169.b.

And note that upon the last office upon the *melius*, makes the first office void, as if upon the *diem*, it be found that the land was holden of the King, *sed per quæ servitia* *Iur. ignorant*. And thereupon the, *Melius*

12. Eliz. Dyer  
2. Stat. F. 6.  
Cap. 8.

awarded, it is found that the tenure of a subject, and all other points uncertaine, as the Tenure, the State, the Value, &c. the first office is void.

21. Ed. 3. 2.

When such inquest is found for the King, this finding is called an office, and it is a Title for the King, whereof the Inquest was taken of such validity, that when the King is once seised by office, the seisin, the office remaines till it bee discharged by matter of as high a nature as the office was, *viz.* matter of Record, namely a Livery, or *Quæst le maine*.

1. H. 7. 19.

21. Ed. 3. 2.

But if an office found for a subject, it makes no Title for him, but is and may be used, as matter of evidence to prove his Title.

Stat. 1. H. 8.

Ca. 8. 3. H. 8.

Cl. 12.

Coo. 1. p.

Alton Woods

42.

Coo. 4. p. Sad-

lers case. 5. 7.

18. El. ca. 12.

An office is sufficient to entitle the King, although it be never returned, for if it doe appeare by the examination of the Escheator that hath upon such office seised the lands into the Kings hands, it is sufficient; But offices are usually returned if they be found by Writ or Commission into the Chancery whence the Writ or Commission issued, and from thence to the Clerkes of the Bagge transcribed into the Exchequer, and into the Court of Wards,

Wards, but offices found *Virtute officii*, without any Writ or Commission, the Escheater may at his choice returne them either into the Chancery or Exchequer; And if they be found in the County Palatine of Lancaster, Chester, or Durham, either by Writ or otherwise, they are to be thence transcribed into the Court of Wards.

When an office is found intitling the King to a Wardship, it relates to the time of the ancestors death, and gives the King all the meane profits of his land for that time, because the King hath the wardship *Ratione prioris tituli*, viz. by reason of his seigniorie, and loseth his rent and services in the meane time.

16. Ed. 4. 1.

Coo. 4. p. Sadlers case. 59.

But an office to entitle the King to an Ideot, relates for the meane profits and the land no further then the finding the office, because the King hath the custody of an Ideot, *Jure protectionis Rege*, protection commeth by the office found, and not before; but yet for avoiding of mean conveyances of his land made by the Ideot, the office hath relation to the Ideots Nativity.

Coo. 8. p. Comfords case. 180.

An office is requisite to be found after 4. Eliz. Dyer 3: the

1.H.7.19.&c.  
Coo.9.P. Sir  
Geo.Reynolds  
case 95.b.

the death of the Kings Tenant for two causes, first for the dignity of the Kings person, who cannot take nor depart with any inheritance or freehold but by matter of record.

Secondly because it puts the King presently upon the office found in actuall and full possession of the Wards, lands, and the profits thereof since his Ancestors death before any service or entrey by the Escheators, which actuall possession the King hath not before Office.

Sym.præ.Rs.  
34.69.

For although by *Stamf.* he hath before office possession in law cast upon him by right of his signiory, which he may by entry or seisure of his Escheators before office reduce to an actuall possession, sufficient to enable him to keepe the lands in his owne hands, and to take the profits thereof, yet he hath not till office be found a perfect actuall possession, such as may enable him to grant or lease the land to his Committee.

Stat.18.H.6.  
C.b.

Because the statute of 18. H. 6. provideth that all letters patents made by the King of lands or Ten: before office found and returned, or within one Moneth

Moneth after, unlesse it be to him that tendereth his traverse, the same office shall be voyd.

But the Master of the Wards may within that moneth after office make a release of Wards or Idiots lands to other then he that tenders a Traverse being enabled thereunto by the Stat. 32. H. 8. which is generall, and a latter Statute 18. Hen. 6. Stat. 32. H. 8. C. 46.

This seemes to be the reason why our bookes say that in case of Wardship of land the King is presently by the office in possession before seisure, that hee hath not possession till office, and that at this day the Escheator cannot seise any lands into the Kings hands for Wardship or other cause before the kings Title be first found by office, which is to be understood to enable him by such seisure to graunt the lands before office found, for to all other purposes it seemes not against law that the Escheator may at this day seise a Wards lands before office as the words of the *diem* directed him to doe, and as many bookes warrant, whereof see *Stamf. Pra. Rs. fo. 12. 14. 78 b.* Co. 1. p. Sir. Geo. Cursons ca. 256. 1 H. 7 17. 4. H. 7. 1. 5. Ed. 1. B. offic. 55. Co. 8. Paris Stoughtons case 169.

But becaule before office it is doubtfull

doubtfull whether the King have Title or no, the Escheators doe generally of their owne discretion ever since the Statute of Lincolne 79.E.1. forbear to seise before office, thereby to avoid the Kings great trouble in suing the *Ouster le main*, which he was driven to doe by the Escheators seisure only, though afterwards the office found did not intitle the King.

20.Ed.4 11.  
Stam.præ.Rs.  
54.69.

30.H.6.Br.  
Patents 74.  
11.Ed.4 7.

But the King as all other Lords, that are common persons, is in the judgement of Law presently upon his Tenants death in possession of the body of his Ward in right of his seigniory, and may grant away the Wardship thereof, before or after seisure, and before office found, because the said Statute of 18. H. 6. extends not to the body, or in the ancestors life time may grant it, *Quando event. & de hered.* as our bookes and common experience agree.

What





What words in Offices make  
a Tenure.

See before Title Tenure.

**B**Ut by that which hath been said it may be collected how great inconveniences may issue as well to the King by suppressing his Tenures, and consequently withdrawing one of his ancientest revenues of the Crowne as to his subjects, by finding the lands to be holden of the King, where in truth they are not, if corruption should be used in the finding of offices, to prevent which, divers Statutes have been made under severall penalties, concerning an upright and just demeanor therein, as well by the Kings Ministers, as Jurors, and the parties whom it may concerne.

The substance of most whereof follow, 34.Ed.3.c.19.  
All offices not found in good townes o- 36.Ed.3.c.13.  
penly, and by men of good fame, and im- 8.H.6.c.16.  
panelled by the Sheriffe, and having suf- 18.H.6.c.7.  
ficiently

33.H.6.17.

33.H.8.2.

ficiently in the same Countie, and by Indenture betweene the Escheator and the Jurours shall be voide. Escheators ought to finde offices by vertue of writs within one moneth after the receipt thereof, and in good townes, and in open places; and shall take no fees therefore but 40. shillings for executing every writ.

1.H.8.8.

Escheators ought to bee men of 40. markes *per annum* at the least, except Escheators in Cities, Townes, and Counties Palatine of Lancaster and Chester.

Escheators or Commissioners shall not returne any office not found by the oathes of 12. men, and indented, and by them sealed.

Every man shall bee admitted by the Escheators, &c. to give evidence openly in his presence, at the finding of offices.

Escheators, &c. ought to receive offices found by the Jury without delay, and to deliver, the Counterpart thereof indented and sealed by himsele to the Jury, and the rest with the foreman of the Jury, to the end that the Escheators may not imbesill or change such offices.

Stat.8.H.6.

Ca.16.

18.H.6.7.

All offices are to bee returned in the Chancery or Exchequer within one Moneth

Moneth after the taking thereof, and the officers of the Chancery or Exchequer ought to receive the same, and to fill it within 3. or 4. dayes after receipt, and are thence to be transcripted into the Court of Wards, as above is set forth.

Tenant for yeares, Copyholder, and he which hath a rent or other profit out of the Wards lands which are not found in the office, shall have and enjoy these, as if no such office had beene found, which before this Statute he could not have.

VVhere an heire of full age is by an office found to be under age, he may have his writ *de atate probanda*, and may sue his Livery or *Ouster le maine*, and shall be restored to the profit of his land, so if the heire under age be found to be of lesser age then in truth he is, at his full age he may have like remedy, and shall be restored to the profit of his lands from the time of his very full age, notwithstanding such untrue office.

FINIS.